

**RE ARUNACHALAM;
EX PARTE INDIAN OVERSEAS BANK LTD.**

[O.Bk.J. (Chang Min Tat J.) October 23, 1967]

[Ipoh — In Bankruptcy No. 115 of 1967]

Bankruptcy — Bankruptcy notice — Disputing validity of amount in such notice — Requirement of such notice — Consequence of mistake in the amount upon the validity of such notice — Bankruptcy Ordinance, 1959, s. 3(2).

A bankruptcy notice for \$4,344.64 made up of a decretal amount plus costs and interest was served upon the judgment debtor on July 24, 1967. It was undisputed that \$300 had been paid by the judgment debtor so that only \$4,044.64 was owing on the judgment.

Within the 7 days specified in the bankruptcy notice the judgment debtor by express letter to the solicitor for the judgment creditor and to the senior assistant registrar of the High Court, disputed the amount stated in the notice and the validity of the bankruptcy notice which had been served upon him.

Held: (1) where the amount claimed in the bankruptcy notice is in excess of what is due and notice is given within 7 days after service that the bankruptcy notice is disputed on ground of mistake, the bankruptcy notice becomes invalid since it refers to a sum in respect of which the judgment creditor could not have issued execution. This would be the effect of the proviso to section 3(2) of the Bankruptcy Ordinance;

(2) the judgment debtor's letter was sufficient notice to comply with the proviso to section 3(2) of the Ordinance. The bankruptcy notice was bad and must be set aside.

Case referred to:—

(1) *In re Child; Ex parte Child* [1892] 2 Q.B. 77.

BANKRUPTCY.

N. Sharma for the judgment-creditor.

P. P. Dharmananda for the judgment-debtor.

Cur. Adv. Vult.

Chang Min Tat J.: Arising from a request for issue of a bankruptcy notice dated the 4th July, 1967, based on a final judgment against the judgment-debtor given on the 25th August, 1965, for \$4,190.35 cents, interest at the rate of 10% from 1st July, 1965, to the date of the judgment and \$90 costs, a bankruptcy notice was issued on the 13th July, 1967, for \$4,344.64 cents made up of the decretal sum as aforesaid, costs of \$90, and interest calculated at \$64.29 cents. The bankruptcy notice was personally served on the judgment-debtor on the 24th July, 1967.

It is common ground that between the date of the judgment and the request of a bankruptcy notice, the judgment-debtor had paid a sum of \$300 towards settlement of his debt, so that \$4,044.64 cents and not \$4,344.64 cents was owing on the judgment.

On 31st July, 1967, i.e. within the 7 days specified in the bankruptcy notice for the payment of the \$4,344.64 cents claimed in the said notice, the judgment-debtor sent by express service a notice to the solicitor for the judgment-creditor, copy, also by express service, to the

A senior assistant registrar, High Court, in the following terms:—

"With reference to your notice dated 13.7.67, I do not admit that I owe your clients the sum stated in the notice.

Therefore please take notice that your notice is not valid.

B Please acknowledge receipt.

Yours faithfully".

The solicitor for the judgment-creditor not being in a position to remember the date of the actual service of the letter on him, evidence was led to establish, if possible, the time of the delivery of the letter. The cover of the letter to the solicitor showed quite clearly that the time of posting was 11.55 a.m. on the 31st July, 1967. The inspector of post-men attached to the General Post Office, Ipoh, was called to testify that, in the normal course of events, such posting would have gone out on delivery at 1.00 p.m. the same day and would have been delivered before 2.30 p.m. by a post-man detailed for such express service. The 31st July, 1967, was a Monday, and in the absence of any evidence that the office of the solicitor for the judgment-creditor was closed on the first working day of the week, I see no reason for not holding that the express-delivery letter was, in fact, delivered at the office of the said solicitor on 31st July, 1967, before 4.00 p.m. on that day, and I so hold. There is confirmation in my finding in the court file, where the copy to the senior assistant registrar was clearly marked as being received on the 31st July, 1967.

F On the affidavits filed by both parties to the petition, there is an allegation, denied by the judgment-creditor, of an agreement between them for the judgment-debtor to pay the judgment sum by instalments. No evidence was led on this point. As I understand the position, the judgment-debtor, having departed for India, is not immediately available to give evidence, and I take it, therefore, that his solicitor relies solely on the claim for an amount greater than that actually owed by the judgment-debtor to the judgment-creditor to invalidate the bankruptcy notice. I, therefore, make no finding in respect of the allegation to allow the judgment-debtor to pay by instalments.

A considerable body of law was directed at me in the course of submission, but it seems to me clear that section 3(2)* of our Bankruptcy Ordinance No. 20 of 1959 applies. This section reads as follows:—

I "3. (2) A bankruptcy notice under this Ordinance shall be in the prescribed form and shall state the consequences of non-compliance therewith and shall be served in the prescribed manner:

Provided that a bankruptcy notice —

(i) x x x x x x x x x

* re-enacted as section 3(2) of the Bankruptcy Act No. 55 of 1967.

(ii) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such mistake; but if the debtor does not give such notice he shall be deemed to have complied with the bankruptcy notice, if within the time allowed he takes such steps as would have constituted compliance with the notice had the actual amount due been correctly specified therein."

The proviso was introduced in England by section 16 of the 1913 Act so that where such notice as is referred to is given, the position in law is the same as in England before 1913, and as in Singapore which has not a similar proviso. Conversely, where no such notice is given, then any English decision prior to 1913 is not applicable. The law would then be as in Singapore and as in England after 1913.

On the authorities, it seems to me reasonably clear that where an excess is claimed in the bankruptcy notice and no such notice of dispute of the validity of the notice by reason of such excess is given, then the bankruptcy notice is not invalid, merely by reason of the excess.

Where the amount claimed in the bankruptcy notice is in excess and notice, as is referred to in the proviso to section 3(2) of the Ordinance, is given within 7 days after the service of the bankruptcy notice, then the excess becomes relevant and on the authorities the bankruptcy notice is invalid, since it referred to a sum in respect of which the judgment-creditor could not have issued execution: *In re Child; Ex parte Child*.⁽¹⁾

In this case, I have to decide whether the letter dated the 31st July, 1967, was such a notice as is required to be given to dispute the validity of the bankruptcy notice. Not unnaturally, two opposing submissions were urged upon me, but while a considerable number of authorities was referred to on the law on the matter, no single reference was made to any decision on what are, if any, the requirements of such a notice.

It is true that the letter could have been more happily or more accurately worded. But, read as a whole, what it says is that the judgment-debtor denies owing the judgment-creditor the sum claimed in the notice. The absence of the words "or at all" seems to be significant. By reason of such absence, the judgment-debtor does not, in my view, deny the existence of any debt to the judgment-creditor. What he does deny is the debt of \$4,344.64 cents as claimed in the notice, but it seems to me he does not and cannot be taken to deny the existence of a debt for a smaller amount. If any doubt exists on this point, his next sentence that he disputes the validity of the bankruptcy notice would make it clear that he does not say he could not be adjudicated a bankrupt on a proper notice on the facts as existing then between the parties, but what he says is that he could not and should not be

A made the subject of any receiving or adjudicating orders on that particular notice. In my view, the said letter is a notice to the judgment-creditor that the debtor disputes the validity of the bankruptcy notice on the ground of a mistake in the sum claimed as actually due.

B I accordingly hold that the said letter dated the 31st July, 1967, was a sufficient notice to comply with the proviso to section 3(2) of the Bankruptcy Ordinance, and that it was served within time. The bankruptcy notice is, therefore, bad and is set aside. There will be an order for costs to be paid by the judgment-creditor.

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Bankruptcy notice set aside.

Solicitors: N. Sharma; Dharmananda & Co.

SUNDARAM v. CHEW CHOO KHOON

[O.C.J. (Chang Min Tat J.) October 23, 1967]

[Ipoh — Civil Suit No. 232 of 1967]

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Land Laws — Chargee making foreclosure application under s. 260 of the National Land Code, 1965 — Chargor seeking declaration that charge void — Chargor applying to court under s. 447 of the National Land Code by summons in chambers — Whether application proper — Remedy of chargor in such cases — National Land Code, 1965, ss. 28(2), 260 & 447.

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The plaintiff had executed three charges in favour of the defendant over his land which the defendant sought to enforce by sale under section 260 of the National Land Code in a foreclosure application before the Collector of Land Revenue. The foreclosure application was adjourned by the collector so that the plaintiff could in the meantime apply to the High Court under section 447 of the Code. The plaintiff then sued for a declaration that the charges executed by him in favour of the defendant were void and unenforceable. The plaintiff then sought the postponement of the foreclosure proceedings before the collector by first applying by registered letter under section 28(2) of the Code and secondly by applying by way of summons in chambers under section 447 of the Code for stay of the collector's enquiry till his claim in the High Court was determined. When the summons in chambers came up for hearing objection was taken by counsel for the defendant as to the form of the application. It was submitted by the defendant that the application should have been by way of originating summons and that if section 447 of the Code applied, the reference therein to a summons in chambers was plainly wrong as any application not in a pending cause or matter must by the Rules of the Supreme Court be made in an originating summons.

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Held: (1) section 447(1) of the Code provides in the event of inconsistency for the prevalence of any rules of court over any provision of the Code so that unless it is a pending cause or matter any application to the court must be by way of originating summons in accordance with the Rules of the Supreme Court;

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(2) section 447(2) refers to proceedings in the High Court under the Code and directs that in "proceedings so taken" any party thereto may apply for procedural directions in a matter not provided for. The civil action could not be said to be a proceeding under the Code and an application for stay of the collector's enquiry is not an application for procedural directions and cannot be made under this particular section.